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CUMULATIVE DIGEST

CH. 30
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§30-1(a)
Generally

People v. Steele-Kumi, 2014 IL App (1st) 133068 (No. 1-13-3068, 11/17/14)

A criminal defendant who is acquitted by reason of insanity and found by the trial court to be in need of mental health services on an inpatient basis is to be committed for a period not to exceed "the maximum length of time that the defendant would have been required to serve, less credit for good behavior . . . , before coming eligible for release had he been convicted of and received the maximum sentence for the most serious crime for which he has been acquitted by reason of insanity." 730 ILCS 5/5-2-4(b).

The court rejected the State's argument that where a defendant is acquitted by reason of insanity on multiple charges which would have carried mandatory consecutive sentences had the defendant been convicted, the maximum commitment period should be equal to the term that would be served on two consecutive sentences rather than the maximum sentence for the single most serious crime. The court concluded that the plain language of §5-2-4(b) specifies that the commitment period is based upon the maximum sentence for the single most serious crime, and that the legislature would have used different statutory language had it intended for the commitment period to be based on multiple offenses.

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§30-1(b)
Burden of Proof - Sufficiency of Evidence

People v. Kando, 397 Ill.App.3d 165, 921 N.E.2d 1166 (1st Dist. 2009)

The Appellate Court reversed defendant's conviction for guilty but mentally ill of attempt murder and aggravated battery. The court found that the trial court acted contrary to the manifest weight of the evidence by rejecting defendant's insanity defense.

1. The State need not present expert testimony when an insanity defense is raised, but may rely on the evidence that has been introduced and reasonable inferences from that evidence. Expert testimony may be rejected by the trier of fact if it concludes that, based on lay testimony, the defendant was sane. In doing so, the court should consider whether the lay observations were made shortly before or after the crime, whether defendant had a plan to commit the crime, and whether defendant took steps to avoid detection of the crime.

A finding of sanity may be based on lay opinion if such opinions are based on personal observation of the defendant.

The weight given to an expert witness's opinion on sanity cannot be determined arbitrarily, however; it must be based on the reasons given and the facts supporting that opinion. Thus, while the trier of fact may chose to reject or give little weight to expert psychiatric testimony, the power to do so is not unbridled. "[A] trial court may not simply draw different conclusions from the testimony of an otherwise credible and unimpeached expert witness."

2. The trial court had no basis to reject the testimony of two appointed expert psychiatrists, who testified that defendant could not have appreciated the criminality of his conduct while he was under a religious delusion that he was fighting with the devil. The court

stressed that the experts did not fail to consider relevant information concerning the defendant or ignore information that was contrary to their opinion. In addition, both experts were employed by the Circuit Court of Cook County and examined the defendant pursuant to appointment, not because they had been hired by the defense.

The court also noted the voluminous evidence of defendant's mental illness, which had lasted for at least 16 years and resulted in more than 27 psychiatric hospitalizations. In addition, defendant had taken heavy dosages of anti-psychotic medications, and had been rendered fit to stand trial only by taking an anti-psychotic medication that was considered a drug "of last resort" due to its side effects. Finally, when defendant missed even a single dose of that medication, he suffered relapses and immediately demonstrated symptoms of psychosis.

3. The court rejected the State's argument that the testimony of the two experts was rebutted by the testimony of the State's four lay witnesses. The court found that the lay testimony was insufficient to overcome the clear and convincing evidence offered by the experts, and in many respects supported the insanity defense.

(Defendant was represented by Assistant Defender Christofer Bendik, Chicago.)

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Decisions Under Prior Law

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§30-2
Intoxication

Note: Under 720 ILCS 5/6-3, as amended by P.A. 92-466, eff. January 1, 2002, voluntary intoxication is no longer a defense to criminal conduct; only *involuntary* intoxication may serve as a defense.

People v. McMillen, 2011 IL App (1st) 100366 (No. 1-10-0366, 11/17/11)

1. Involuntary intoxication constitutes an affirmative defense where the intoxicated or drugged condition is involuntarily produced and results in a deprivation of substantial capacity to either appreciate the criminality of one's conduct or to conform such conduct to the requirements of the law. Under **People v. Hari**, 218 Ill.2d 275, 843 N.E.2d 349 (2006), an involuntary intoxication defense may arise from the unexpected and unwarned adverse side effects of prescription medication.

The Appellate Court concluded, however, that **Hari** does not authorize an involuntary intoxication defense where the defendant suffers adverse side effects from a combination of prescription medication and illegal substances which were knowingly consumed. In other words, "the knowing, or voluntary, ingestion of . . . illegal drugs precludes the use of the

involuntary intoxication defense" even where the defendant also consumed prescription medication. "[T]he **Hari** holding does not support the proposition that mixing prescription medication with illegal drugs gives rise to the involuntary intoxication defense."

2. In any event, the **Hari** doctrine would not apply where the defendant consumed four prescription medications along with cocaine. **Hari** holds that an involuntary intoxication defense may arise where the defendant suffers an unanticipated reaction to prescription medication. The court concluded that because the adverse effects of mixing cocaine and prescription medications is well-known, and excessive cocaine use alone is commonly known to produce adverse side effects, "it is common knowledge that adverse side effects may result when cocaine is used along with four other prescription medications." Thus, defendant's reaction could not be said to be unanticipated.

The court added that the record showed that defendant had been on the prescription medication for at least six months, raising further doubts concerning any claim that the adverse effects of the medication were unknown to him.

Because defendant lacked a reasonable basis to present an involuntary intoxication defense based on the combination of cocaine and prescription medication, the trial court properly dismissed as patently without merit a post-conviction petition which argued that defendant had been deprived of his constitutional right to present a complete defense.

(Defendant was represented by Assistant Defender Karl Mundt, Chicago.)

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